BLANK
PAGE

BLANK PAGE.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1965.

No. 715.

ST. LOUIS MAILERS' UNION LOCAL NO. 3,
Petitioner,

vs.

GLOBE-DEMOCRAT PUBLISHING COMPANY,
Respondent.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

St. Louis Mailers' Union Local No. 3, petitioner, prays that this Court grant a rehearing of its order of January 17, 1966, denying this petitioner a writ of certiorari, 86 S. Ct. .... (1966), and that the writ issue to review the judgment of the Court of Appeals for the Eighth Circuit in the above entitled case as prayed for in the petition for writ of certiorari filed herein on November 4, 1965.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT.

1. During the time that this petition for certiorari has been pending (November 4, 1965 to January 7, 1966) there has been a final and total clarification by this Court of the national labor policy regarding cases in which a factual issue exists which can be described either as an unfair labor practice or a contract grievance. On December 7th, 1965, this Court handed down its decision in International Union United Automobile Workers, etc. v. Scolfield, et al., 86 S. Ct. 373 (1965). At page 383 this Court ruled: "In short, we think that the statutory pattern of the Labor Act does not dichotomize 'public' as opposed to 'private' interests. Rather, the two interblend in the intricate statutory scheme" (citing Retail Clerks, etc. v. Food Employers Council, Inc., Ninth Circuit, 351 F. 2d 525, Opinion dated October 19, 1965). In addition to the ruling in Scolfield this Court denied certiorari on October 11, 1965, in the case of Fibreboard Paper Products Corporation v. East Bay Union of Machinists, etc. (Facts and Opinion, 344 F. 2d 300, cert. den., 86 S. Ct. 61 (1965)).

The sum and substance of the actions of this Court in the Scolfield and Fibreboard cases is in direct conflict and contradiction with the statement of the Eighth Circuit Court of Appeals in their opinion in petitioner's case (Page 28, petition for writ of certiorari). The Eighth Circuit differentiates between an issue of contract breach and an unfair labor practice in such a way as to erroneously deny that the same factual situation can give rise both to the existence of an issue of contract breach in a suit for specific enforcement of a labor agreement and also an unfair labor practice complaint before the N. L. R. B. If the opinion of the Eighth Circuit Court

of Appeals in petitioner's case is allowed to stand as is, it will create needless doubt and confusion among litigants in the Eighth Circuit because it is a mis-statement of the national labor policy as it is now pronounced by this Court.

2. The obvious mis-statement of the national labor policy made by the Eighth Circuit Court of Appeals (Page 28, petition for writ of certiorari) is further erroneously amplified by its decision in the petitioner's case (petition for writ of certiorari, page 28) wherein the Eighth Circuit Court resolves adversely the petitioner's contention that the dispute between these parties must be ordered into mandatory arbitration as required by the labor agreement between these parties (petitioner's writ of certiorari, page 5, footnote 5). In deciding the issues in this case the Eighth Circuit Court of Appeals has misconstrued an allegation of contract breach as an unfair labor practice and thereby refused to order these parties into arbitration as prayed for by this petitioner. Instead, the Eighth Circuit Court of Appeals made itself the arbitrator and made arbitration findings regarding both the interpretation and enforcement of certain vital provisions of the labor agreement between the parties in direct violation of the national labor policy. This petitioner has thereby been denied the benefit of having its problem with the respondent considered within the common law of the newspaper industry through the mandatory arbitration vehicle agreed to by these parties as the **sole** forum for resolution of all of their contract disputes.

In view of this Court's recent rulings in Scofield and Fibreboard, etc., v. East Bay, etc., the position of the Eighth Circuit Court of Appeals is wholly untenable. The national labor policy formulated by this Court and the other Circuit Courts of Appeal has not been adhered to in the Eighth Circuit.

CONCLUSION.

For the reasons set forth above and in the petition for writ of certiorari it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Eighth Circuit.

Respectfully submitted,

.....
JEROME J. DUFF,
Counsel for Petitioner.

Certificate of Counsel.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

.....
JEROME J. DUFF,
Counsel for Petitioner.

Certificate of Service.

State of Missouri, }
City of St. Louis. } ss.

I, Jerome J. Duff, of counsel for the Petitioner herein, and attorney of record for the Petitioner in the Court below, depose that on the 10 day of February, 1966, I served four copies of the foregoing Petition for Rehearing on the Respondent, as required by Rule 33, Paragraph 1,

by personally delivering said copies hereof to Mr. Lon O. Hocker, Attorney of Record for the Respondent, in care of the law offices of Hocker, Goodwin and MacGreevy, 411 North Seventh Street, St. Louis, Missouri (63101).

.....

Jerome J. Duff,
Member of the Bar of the United States Supreme Court.